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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,248

12/01/2003

Sharon Ann Norton

P145

1932

27752 7590 07/28/2010  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER

CLARK, AMY LYNN

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

07/28/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,248	<b>Applicant(s)</b> NORTON ET AL.	
	<b>Examiner</b> Amy L. Clark	<b>Art Unit</b> 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,7,10-14 and 20-56 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 24-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7,10-12,14 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Any rejection found in the previous Office Action and not repeated herein has been withdrawn based upon Applicants' amendments.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

The election/restriction requirement mailed out on 01/22/2010 has been withdrawn. However, all other election/restriction requirements remain for reasons of record.

Newly submitted claims 54-56 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally elected claims were drawn to beet pulp as the source of fiber. The newly submitted claims claim fructooligosaccharide as the source of fiber.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 54-56 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

**Claims 1, 7, 10-12, 14 and 20-23 are currently being examined on the merits.**

***Claim Rejections - 35 USC § 112***

Claims 1, 7, 10-12, 14 and 20-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In amended claim 1, Applicant claims, “an edible companion animal composition comprising from about 1% to about 10% of total fermentable fiber, by weight of the composition, wherein the composition comprises a gravy; wherein the composition comprises at least 80% water”, thereby introducing a composition comprising fiber, gravy and water and “at least 80% water”, which have no support in the as-filed specification and are new matter. The insertion of the limitation is a new concept because it neither has literal support in the as-filed specification by way of generic disclosure, nor are there specific examples of the newly limited phrases. The specification discloses a composition comprising fiber in the form of a gravy, which may further comprise water (See page 6, lines 17-27 and page 7, lines 1-19 of the originally filed specification). The specification discloses water in an amount of at least about 80% by weight of the composition, which is not adequate support for the language “at least 80% water”. This is a matter of written description, not a question of what one of skill in the art would or would not have known.

The material within the four corners of the as-filed specification must lead to the generic concept. If it does not, the material is new matter. Declarations and new references cannot demonstrate the possession of a concept after the fact. Thus, the insertion of the above mentioned claim-limitation is considered to be the insertion of new matter for the above reasons.

As the above- mentioned claim limitation could not be found in the present specification, the recitation of the claim limitation is deemed new matter; and, therefore it must be omitted from the claim language, unless Applicant can particularly point to the specification for literal support.

Claims 1, 7, 10-12, 14 and 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of Claim 1 are rendered uncertain by the phrase "An edible companion animal composition" because it is unclear if Applicants are claiming that the composition is an edible composition for administration to companion animals or if the composition contains companion animals that are edible. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

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Claims 1, 7, 10-12, 14 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheuk et al. (B\*).

Cheuk teaches a canine (which reads on dog) pet food composition (which is edible, by definition) comprising a gravy (See paragraph 0028), grain, wherein the grain can be beet pulp (See paragraph 0040) (which reads on fermentable fiber) and wherein the grain is present in an amount of about 8 wt % to about 16 wt % (See paragraph 0047) (which reads on the limitations of claim 1), water (See paragraphs 0006 and 0011), vitamins and minerals (See paragraph 0040). Cheuk further teaches that the composition comprises meat protein, wherein the protein content is present in an amount of about 15-25% and the fat content is present in an amount of about 5-15% (See paragraphs 0038 and 0039) (which reads on the limitations of claims 10 and 11).

At the time the invention was made, a pet food composition for administration to canines comprising gravy, grain, wherein the grain can be beet pulp, and water was known, as clearly taught by Cheuk. Since the instantly claimed ingredients of gravy, beet pulp, and water were known to be useful as a canine food, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition taught by Cheuk by modifying the amount of water in the composition.

One of ordinary skill in the art would have had a reasonable expectation of success and would have been motivated to modify the amount of water in the pet food composition for oral administration to dogs because at the time the invention was made, these ingredients were well known to be useful ingredients in a food for canines. It would have been well in the purview of one of ordinary skill in the art practicing the

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invention to pick and choose the instantly claimed amount of water because at the time the invention was made, it was known that water could be combined with gravy and beet pulp to provide a pet food for canines. Thus, the claimed invention is no more than the routine optimization of a result effect variable.

Based upon the beneficial teachings of the cited references, the skill of one of ordinary skill in the art, and absent evidence to the contrary, there would have been a reasonable expectation of success to result in the claimed invention.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 7, 10-12, 14 and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-

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1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy L Clark/  
Primary Examiner, Art Unit 1655